

No. 16177 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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LYNDOL L. YOUNG and MILDRED W.  
YOUNG, Petitioners,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Petition to Review a Decision of The Tax Court  
of the United States

FILED  
NOV 21 1958  
PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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The Tax Court of the United States

Docket No. 57876

LYNDOL L. YOUNG and MILDRED W.  
YOUNG,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency Ap:LA:AA:KD-Ht 90D:CSW, dated March 9, 1955, and as a basis of their proceeding allege as follows:

1. The petitioners reside at 400 South Burnside Avenue, Los Angeles 36, California. The return for the period here involved was filed with the District Director of Internal Revenue, Los Angeles, California.
2. The Notice of Deficiency, a copy of which is attached and marked "Exhibit A" was mailed to the petitioners on March 9, 1955.
3. The deficiencies as determined by the Commissioner are in income taxes which were due for the taxable year ended December 31, 1952, in the amount of \$7,705.78, of which the full amount of \$7,705.78 is in dispute.
4. The determination of tax set forth in the said

Notice of Deficiency is based upon the following errors:

(a) It was error for the Commissioner to reduce the business expenses listed under Paragraph D, page 2, of the Statement of Deficiency (Exhibit A) from \$19,147.62 to \$4,916.62. The various items which were reduced by the Commissioner are as follows:

Club dues claimed: \$2,154.00.

Allowed: \$1,008.00.

Business promotion expense and maintenance expense of 138 North June Street, where petitioners resided and which premises were used also by petitioner Lyndol L. Young for office and business purposes:

Amount claimed: \$5,843.62.

Also originally included in said item was the sum of \$3,650.00 representing cash expended by petitioner Lyndol L. Young for business purposes.

Total: \$9,493.62.

Amount allowed by Commissioner: \$750.00.

Travel expenses originally claimed: \$3,500.00.

Allowed by Commissioner: \$2,158.62.

Depreciation of Cadillac car claimed: \$4,000.00.

Allowed by Commissioner: \$1,000.00.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

(a) As indicated in the Statement of Deficiency (Exhibit A) sub-paragraphs (a), (b), (c), (e), (f), (g), (h) and (i) have been agreed to by the Commissioner and petitioners. The items in dispute in

this proceeding are those which are listed under Paragraph D, page 2, of the Statement of Deficiency (Exhibit A) amounting to the sum of \$14,231.00.

(b) Club dues disallowed in the sum of \$1,146.00 is not supported by the record or the facts which were submitted to the representatives of the Commissioner. Although only the sum of \$1,008.00 is allowed to cover club expense (Exhibit A) the sum of \$1,581.62 was approved by the representatives of the Appellate Division as shown in petitioner's letter dated December 9, 1954, copy of which letter is attached hereto and marked "Exhibit B." The amount claimed by petitioners includes expenses incurred by petitioner Lyndol L. Young at the following clubs: Los Angeles Stock Exchange, Los Angeles Country Club and the Beach Club. Petitioner Lyndol L. Young has been a member of said clubs for many years and has received from clients through the use of the facilities of said clubs substantial fees over a period of years in a sum in excess of \$100,000.00.

(c) The item which is listed business promotion expense (Exhibit A) where petitioners claim \$9,493.62 in their return and which is allowed by the Commissioner in the sum of \$750.00 consists of the following breakdown:

The sum of \$5,843.62 for part of the maintenance and operation of the premises known as 138 North June Street, Los Angeles, California, used by petitioners as a home and by petitioner Lyndol

L. Young in part as his office. This item of expense was approved in approximately the same amount by the Director of Internal Revenue as recently as April 1953, in accepting the report of revenue agent Theo Schultz covering the income tax returns of the taxpayers for the years 1948, 1949 and 1950. Petitioners paid the deficiency found due by Agent Schultz in said report and now claim that this item of expense covering the premises at 138 North June Street has been approved in principle in the previous tax years above mentioned and that petitioners are entitled to make the same deduction in connection with said premises for the year 1952. The other item of expense making up the total of \$9,493.62 consisted originally of cash expended for business purposes by petitioner Lyndol L. Young in the sum of \$3,650.00. This item was later reduced by petitioners in conference with the representatives of the Appellate Division to the sum of \$3,150.00. Although the Statement of Deficiency (Exhibit A) shows only an allowance of \$750.00 of this total expense of \$9,493.62 the representatives of the Appellate Division in conference with petitioner Lyndol L. Young approved the allowance of \$1,076.00 on the item of \$5,843.62, and further approved the allowance of the sum of \$2,000.00 on the item of \$3,150.00 (Exhibit B).

(d) Travel expense originally claimed, \$3,500.00; Amount allowed, \$2,158.62.

Both in petitioner's protest as well as in the conference with the representatives of the Appellate Division petitioner Lyndol L. Young stated that the

sum of \$7,506.68 and not the sum of \$3,500.00 as reported was incurred by petitioner Lyndol L. Young as travel expense and that in view of the allowance of only \$2,158.62 for this item, the amount claimed by petitioners is the full amount of \$7,506.68, less not more than 30% thereof to cover the expenses of Mrs. Young on the trips where she accompanied petitioner Lyndol L. Young.

(e) Depreciation of Cadillac car claimed, \$4,000.00; Allowed, \$1,000.00.

This car was purchased in December 1948 and through oversight and inadvertance on the part of the Accountant for petitioner Lyndol L. Young depreciation was not claimed for the years 1949, 1950 and 1951 in the sum of \$1,000.00 for each of said years. This automobile cost \$5,200.00. Because of this oversight depreciation for said years 1949, 1950 and 1951 was included in the petitioners' income tax returns for the year 1952. Petitioners contend that inasmuch as the failure to take said depreciation was not because of any willful or intentional motive on the part of the petitioners but solely through inadvertence of said Accountant that they were entitled to claim the sum of \$3,000.00 for the said years 1949, 1950 and 1951 in their return for the year 1952.

6. As disclosed by the income tax return and the Statement of Deficiency the gross income received by petitioner Lyndol L. Young from his law practice during the year 1952 was approximately \$62,-

000.00. No other income was received by either of the Petitioners from any other source for the year 1952. Petitioners therefore respectfully contend that the business expenses claimed by petitioners in connection with the maintenance of the law practice of petitioner Lyndol L. Young in the total amount of \$19,147.62 is reasonable, fair and just under the Cohan Rule when considered in their relationship to the income received by petitioner Lyndol L. Young from his law practice. Taxpayers therefore respectfully claim that there has been an overpayment for their tax liability for the year 1952 and that no deficiency should be assessed in any amount, but that the amount overpaid should be refunded to taxpayers, together with interest.

Wherefore, the petitioners pray this Court may hear the proceeding and redetermine that no deficiency exists in the income tax of the petitioners for the year 1952.

LYNDOL L. YOUNG,  
/s/ LYNDOL L. YOUNG,  
Counsel for Petitioner

Duly Verified.

EXHIBIT "A"

Form 1230 (App.)

U. S. Treasury Department, Internal Revenue  
Service, Regional Commissioner

In Reply Refer To

Mar. 9, 1955

Ap:LA:AA:KD-HT  
90D:CSW

Mr. Lyndol L. Young and Mrs. Mildred W. Young  
(Husband and Wife)

138 North June Street, Los Angeles 4, California

Dear Mr. and Mrs. Young:

You are advised that the determination of your income tax liability for the taxable year (x) ended December 31, 1952, discloses a deficiency or deficiencies of \$7,705.78, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1250 Subway Terminal Bldg., Los Angeles 13, Calif. The signing and filing of this form will expedite the closing of your return(x) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,  
Commissioner,  
/s/ By H. L. DUCKER,  
Associate Chief, Appellate Division

Enclosures: Statement, Form 1276, Agreement Form.

Statement

Ap:LA:AA:KD-Ht

90D:CSW

Mr. Lyndol L. Young and Mrs. Mildred W. Young, 138 North June Street, Los Angeles 4, California

Tax Liability for the Taxable Year Ended December 31, 1952.  
1952—Deficiency: \$7,705.78.

In making this determination of your income tax liability, careful consideration has been given to the report of examination, a copy of which was forwarded to you on August 24, 1954, to your protest dated September 21, 1954, and to the statements made at conferences held on October 20, November 15, and December 8, 1954.

## ADJUSTMENTS TO NET INCOME

Net income as disclosed by return .....	\$24,575.16
Additional income and unallowable deductions:	
(a) Clerical error	\$ 200.00
(b) Unreported income	1,150.00
(c) Automobile expense	367.69
(d) Business expenses	14,231.00
(e) Accident and health premiums	169.27
	\$16,117.96
<hr/>	
Additional deductions:	
(f) Subscriptions	\$ 14.56
(g) Legal and Accounting	50.00
(h) Office supplies	200.17
(i) Postage	2.00
	\$ 266.73
	15,851.23
<hr/>	
Net income as adjusted.....	\$40,426.39

## EXPLANATION OF ADJUSTMENTS

(a), (b), (c), (e), (f), (g), (h) and (i). These adjustments have been previously agreed to by you.

(d) It has been determined that you have overstated your allowable business expenses to the extent of the amount disallowed in accordance with the following adjustments:

	Claimed	Allowed	Disallowed
Club dues .....	\$ 2,154.00	\$1,008.00	\$ 1,146.00
Business promotion expense ....	9,493.62	750.00	8,743.62
Travel expenses .....	3,500.00	2,158.62	1,341.38
Depreciation on Cadillac car....	4,000.00	1,000.00	3,000.00
<hr/>			
Total.....	\$19,147.62	\$4,916.62	\$14,231.00

## COMPUTATION OF TAX

Net income as adjusted .....	\$ 40,426.39
Less: Exemptions (2) .....	1,200.00
<hr/>	
Amount subject to tax .....	\$ 39,226.39
Joint return (one-half) .....	\$ 19,613.20
Tax on \$19,613.20 .....	\$ 7,887.79
Joint return (multiplied by 2) .....	\$ 15,775.58

Correct income tax liability .....	\$ 15,775.58
Assessed:	
Original, Acct. No. 263025840 .....	\$7,330.00
Additional, Feb. 1955 List,	
Acct. No. 2-510002 .....	739.80
	\$ 8,069.80
Deficiency of income tax .....	\$ 7,705.78

### EXHIBIT "B"

Lyndol L. Young, Attorney at Law, Suite 845 General Petroleum Building, Los Angeles 17

(Copy)

December 9, 1954

Internal Revenue Service  
Appellate Division  
Subway Terminal Building  
Los Angeles, California

Attention: Messrs. Wulke and Graham

Dear Sirs:

At your request I attended a conference in your office yesterday, and you made the following proposal to me in connection with the adjustment of my 1952 tax return:

The increase of my income by the sum of \$1,350.00 is correct.

You propose to allow me \$1,132.00 for my automobile expense. I claimed \$1,500.00, and \$500.00 was allowed by the agent.

The telephone expense of \$835.00 is approved by you.

My club expense, which is claimed in the sum of \$2,154.00, is approved by you in the sum of \$1,581.00.

My travel expense, which I claimed in the sum

of \$3,500.00, is approved by you in the sum of \$2,138.62.

Depreciation on my 1949 Cadillac Automobile was claimed by me in the sum of \$4,000.00, and you approved this item for the sum of \$1,000.00.

Business production and entertainment expenses claimed by me in the sum of \$5,843.63 is reduced by you to the sum of \$1,076.00.

Cash disbursements made by me in connection with business expense in the sum of \$3,150.00 is approved by you for the sum of \$2,000.00.

You are advised that I accept your conclusions on the following items: Automobile expense and telephone expense.

I decline to accept your proposals on all of the other items.

My total travel expense for the year 1952 was the sum of \$7,506.68. In my return I thought it was more than fair to the Government to claim only \$3,500.00, as Mrs. Young accompanied me on some of the business trips that I made in 1952. However, since a disagreement has arisen with reference to the claim of \$3,500.00 you are advised that in my opinion at least 70% of the total sum of \$7,506.68 should be charged to business expense and that only 30% of said amount is chargeable to having Mrs. Young accompany me.

On the item of \$5,443.63 chargeable to entertainment and business production and cost of operation of premises at 138 No. June Street you are advised that your reduction of this amount to the

sum of \$1,076.00 is arbitrary and without justification in view of the prior approval of this item of expense by the Internal Revenue Department, as stated in my protest and request for hearing. This same expense for the year 1948 when my income was approximately \$35,000.00 was approved for the sum of \$5,456.73, and in the year 1949 when my income was approximately \$40,000.00 this identical expense was approved in the sum of \$4,757.76, and in the year 1950 when my income was approximately \$39,650.00 this identical expense was approved for \$4,998.70. Your reduction, therefore, of the amount claimed in 1952, which is in line with the amount approved in prior years, is without justification and is wholly illogical and unreasonable.

I settled the claimed deficiencies in the years 1948, 1949 and 1950 on the approval by the Department of Internal Revenue of my right to deduct this item of expense as a business expense and the Government is not in a position at this time to repudiate its agreement with me which recognized and approved this expense. Your reduction of this item to the sum of \$1,076.00, when considered in relationship to my income of approximately \$62,000.00 for the year 1952, is unreasonable and without support in law or logic.

To tell me as a lawyer, who received an income of \$62,000.00 in 1952 for my professional services, that I am only entitled to less than 2% of this amount to cover business production and entertain-

ment expense is wholly unreasonable. Even in the Sandrich case, relied on by you, where the same item was \$3,233.91, the Government allowed \$2,250.00. In my opinion this case has no analogy whatsoever to my situation. Sandrich was a paid employee of a Motion Picture company whereas my income is received from an entirely different source, to-wit, my clients, and I think it is for me to say how much money is reasonable for me to charge for the entertainment of my clients and for the purpose of handling their affairs. Certainly the modest sum claimed by me on this item, when considered in its relationship to my income of approximately \$62,000.00 is exceedingly reasonable.

I claimed \$3,150.00 for business expenses paid by me in cash. You propose to reduce this amount to \$2,000.00 upon the basis of allowing me \$10.00 per day for 200 days a year as business days. Whatever may be the schedule followed by other people with reference to working five days a week, I assure you that the business days in my calendar year are 365.

Sincerely,

Lyndol L. Young

LLY-np

Served May 20, 1955.

[Endorsed]: T.C.U.S. Filed May 19, 1955.

[Title of Board and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayers, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4. Denies the allegations of error contained in paragraph 4 of the petition and subparagraph (a) thereunder.

5. (a) Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) to (e), inclusive. Denies the allegations contained in subparagraphs (b) to (e), inclusive, of paragraph 5 of the petition.

6. Denies the allegations contained in *paragraph* of the petition.

7. Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ JOHN POTTS BARNES,  
Chief Counsel,  
Internal Revenue Service.

Of Counsel:

Melvin L. Sears, Regional Counsel; E. C. Crouter, Assistant Regional Counsel; R. E. Maiden, Jr., Special Assistant to the Regional Counsel; Arthur Clark, Jr., Attorney; Internal Revenue Service.

[Endorsed]: Filed June 28, 1955.

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The Tax Court of the United States

Docket No. 58876

In the Matter of:

LYNDOL L. YOUNG, Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### TRANSCRIPT OF PROCEEDINGS

Courtroom of the United States Tax Court, Federal Building, Dept. 9, Los Angeles, California, Wednesday, June 5, 1957, 11:00 a.m.

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 o'clock a.m.

Before: The Honorable John E. Mulroney.

Appearances: Francis J. McEntee, 839 General Petroleum Building, Los Angeles 17, California, on behalf of the Petitioner. Gene F. Reardon, 1135

Subway Terminal Building, Los Angeles 13, California, on behalf of the Respondent. [1\*]

Proceedings

The Clerk: Docket No. 58876, Lyndol L. Young.  
State your appearances, please.

Mr. McEntee: Francis J. McEntee for the Petitioner.

Mr. Reardon: Gene F. Reardon for the Respondent.

The Court: Do you have an opening statement, Mr. McEntee?

Mr. McEntee: This involved an income tax for the year 1952 involving Lyndol L. Young, and his wife, Mildred W. Young.

The main issues go to certain business expenses regarding the use of his home for business purposes, the use of his club for business purposes, and certain trips made for business purposes.

Mr. Young is an attorney and has been engaged in the practice of law here in Los Angeles for many years, and he has wide experience in investments, brokerage business, and general financial experience.

He is also an eminent trial attorney, and has prepared some statements of fact relating to these issues which may save the Court time, and I can call him briefly, but primarily whether certain expenses were reasonable with reference to the income of that year, which was \$62,000.00, and busi-

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\* Page numbers appearing at top of page of Reporter's Transcript of Record.

ness expenses relating to the 138 North June Street address claimed in the amount of \$5,843.63. In addition, there were certain cash disbursements in the amount of \$3,150.00, making a total of \$9,493.62, on which there was a disallowance of \$8,743.62; Mr. Young will give evidence on that.

His club expenses claimed in the return, 1954 tax return, \$2,154.00, of which was allowed \$1,008.00, representing a disallowance of \$1,146.00.

The travel expense claimed was \$3,500.00, which the proposal allowed \$2,158.62, representing a disallowance of \$1,341.38.

I think that summarizes the issue.

Mr. Reardon: The deficiency, your Honor, is in the amount of \$38,295.24, and my understanding is that there are additional issues involved in the depreciation on the Cadillac that have never been resolved. I would like to summarize that; I have that here.

The figures on the travelling expenses disallowed of \$1,341.38.

Mr. McEntee: May I add the depreciation on the Cadillac claim is \$4,000.00, of which \$1,000.00 was allowed and \$3,000.00 was disallowed.

Mr. Reardon: At this time, your Honor, I think it would be proper to offer joint Exhibit 1-A, which is the Petitioner's tax return for the year involved; this is a photostat.

The Court: Is there any stipulation of any of the [4] facts?

Mr. Reardon: No, your Honor.

The Clerk: 1-A.

(Joint Exhibit No. 1-A was marked for identification and received in evidence.)

[See pages 59-62.]

Whereupon

LYNDOL L. YOUNG

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address.

The Witness: Lyndol L. Young, 400 South Burnside Avenue, Los Angeles 36.

Direct Examination

Q. (By Mr. McEntee): Mr. Young, you are one of the Petitioners in this case?      A. Yes.

Q. And your wife, Mildred Young, is the other Petitioner?      A. Yes.

Q. And you did file a tax return for 1952 which has been introduced into evidence? Have you signed this?

A. Yes, I have seen the photostatic copy which you have in your hand, and counsel also showed us the original copy this morning, and the exhibit as introduced is the income tax return filed by Mrs. Young and myself. [5]

Q. And you paid the amount of the tax indicated?      A. Yes.

Q. Now, Mr. Young, you are a practicing attorney in Los Angeles?      A. Yes, sir.

Q. And when were you admitted to the bar?

A. I was admitted to the California Bar in November, 1916. I was admitted to the Bar of the United States Supreme Court in 1921, May, 1921.

(Testimony of Lyndol L. Young.)

Q. And you have maintained an office in downtown Los Angeles?

A. Well, I have intermittently since the time of my admission both in the California Bar and to the Supreme Court of the United States, the Federal Court, but not continuously, no.

Q. Have you made a business use of your home?

A. Yes.

Let me first answer your question with reference to maintaining my office.

Your Honor, when I was admitted to the Bar in 1916, my father was a lawyer and had been a practicing attorney for many years, and I made my office in his office.

In 1918, I was appointed Assistant U. S. Attorney for the Southern District of California, and served in that capacity at the old courthouse that stood on this very site [6] until 1919, a period of about a year and a half, and then I was appointed by the Attorney General of the United States as Special Assistant United States Attorney here to represent the Government in several appeals that had been taken in cases that I prosecuted during the time I was in the office.

I opened my office with my father in 1920, and remained in active law practice in this city with him until 1928. At that time I went into the investment banking business and brokerage business of this city, a company called Lyndol Young and Company, Members of the Los Angeles Stock Exchange, and remained in that business until 1930.

(Testimony of Lyndol L. Young.)

Then the business was closed for the reason of economic conditions of the country at that time, the crash of 1929, for the lack of business to make the operation profitable.

I then, in 1931—no, 1930, after leaving the brokerage business, I represented Mr. E. L. Cord in connection with a number of his local investments in Los Angeles, including the Century Airlines and a broadcasting company which operated two radio stations; also in connection with a building which he constructed at Mariposa and Wilshire Boulevard, and other matters. In 1931, December, I went to Washington, D. C., representing the Century Airlines, in an effort to obtain mail contracts for that company. That company operated from Los Angeles to San Francisco, Sacramento and Portland in the north, and from Los Angeles to Yuma, Phoenix, Tucson and El Paso in [7] the eastern direction.

While I was in Washington, along in March of 1932, I effected a sale of the Century Airlines to the Aviation Corporation. Mr. Harriman now Governor of New York, was Chairman of the Board, and Mr. Robert Lehman was President. Upon that sale being effected, I was made a Director of the Aviation Corporation and went to New York and was in New York in 1932, 1933 and part of 1934. I subsequently became Vice President of the Aviation Corporation, and Director of the American Airways, which is now American Airlines.

I returned to California in 1934, and didn't un-

(Testimony of Lyndol L. Young.)

dertake to resume my law practice until about 1935, at which time I again went into the office with my father, and from 1935 down to the present time, I have been engaged actively in the practice of law.

Q. Can you tell us some of the fees that have been earned in connection with the use of your home?

A. When I returned to California in 1934, and resumed my law practice, as I stated, I opened an office. I didn't open an office for sometime. This house, which was involved in this matter, was a business deduction claimed, was purchased by me in 1927, but as I have related, I left the law practice in 1928 and didn't return until 1935, or 1936. The house has been used in connection with my law practice as an office from 1936 to the present time, because I sold the house in 1955, [8] disposed of the house; bought it for \$20,000.00, and sold it for \$40,000.00, with a commission of 5%.

When I returned from New York, two clients which had been my clients when I was practicing law in Los Angeles, were unfortunately for themselves, but fortunately for their attorney, in legal difficulty. They were Mrs. Katherine Iten and her daughter Mrs. Tierney. They had been my clients from the early twenties.

Mrs. Tierney was involved in domestic difficulty with her husband, and she was at that time seriously ill with tuberculosis.

I instituted, on her behalf, in 1936, a divorce

(Testimony of Lyndol L. Young.)

action against her husband, and she was granted a decree of divorce after a trial, and in 1938 she died.

Because of her physical condition, all of our conferences and meetings and discussions in connection with her domestic difficulties took place either at my home at 138 North June Street, or when she was too ill to come to my home, I went to hers.

Q. Did she ever come to your office?

A. No, Mrs. Tierney never came to my office in connection with any matter I handled for her.

After Mrs. Tierney passed away in 1938, I was named in her will as Co-Executor and Co-Trustee of her will, and her mother, Mrs. Iten, was also Co-Executor and Co-Trustee. I probated the will. She left a large estate, approximately [9] \$900,000.00; she left two children—small children, at that time, ages 5 and 8. I also was named as guardian of the two minor children, along with their grandmother.

I continued to look after that estate continuously, and the two minor children, as their guardian, up until the time when they became of age, one becoming of age in 1950, and the other in 1953.

Q. Did the children come to your home?

A. Yes, the children came to my home, and I purchased, as their guardian, a home within a block from where I resided at 138 North June Street. Our house was constantly visited by the children, who would come there, and the lady that

(Testimony of Lyndol L. Young.)

came with them, in 1940. Many, many problems would come up regarding the children, and she would come and discuss matters with me, and I also would go there.

Q. Approximately what fees did you receive from Mrs. Tierney or her Estate?

A. From both Mrs. Tierney and her Estate I received, from 1936 down to the present time, approximately \$232,000.00.

Q. What did you receive from Mrs. Iten?

A. \$150,000.00.

I might state that Mrs. Iten never came to my office in connection with any of the problems, legal problems, that I handled for her over the period of years that I represented her; she passed away in 1943, and I became Executor under her will, and Trustee of her Estate, and also at that time became [10] the surviving Trustee of her daughter's Estate.

Q. You were still rendering service in the tax year for the Estate of Mrs. Iten, on which you received a substantial fee of \$17,676.00; is that correct?

A. Yes.

Q. And the Tierney Estate, you received in 1952 the sum of \$12,000.00? A. Yes.

Q. I have noticed on this statement the Filor sisters paid you \$15,000.00. In 1952 the Liberty Mutual Insurance Company, in 1952, the fee was \$5,200.00, and the Hiller fee was \$2,500.00.

Mr. Hiller was your client, and his wife sued

(Testimony of Lyndol L. Young.)

him for divorce, and you were associated with me in that particular matter?

A. Yes, sir.

The Filor sisters, their married names are Mrs. M. L. Day, and Mrs. Gertrude Lytten Smith. The services rendered are stated very much in detail in a decision which has recently come down by Judge Laine over in Phoenix, Arizona, involving my services.

"J. Lytten Smith, the Claimant, vs. the United States of America, Defendant. U. S. District Court of Arizona, Civil Action No. 2236, the date of the opinion is 1-5-36."

The services rendered in that matter consisted of the settlement of their interest in their brother's estate in [11] Arizona; their brother, James Filor, was killed in an airplane accident in 1951, August of 1951, and his wife and two children who were with him were likewise killed in the same accident.

These two, Mrs. Day and Mrs. Lytten Smith, were his sisters. He left in Arizona a large ranch, a cattle ranch, and with a number of cattle, I think approximately 2500, 3,000 head of cattle.

Upon his death, the mother-in-law, the mother of his wife, claimed that the property was community property, and that half of it should go to her. These clients of mine lived in Arizona. I had no conversation or meeting with them in connection with this matter in Los Angeles, either in my office, or in my home, except over the telephone. However, both of them were in my home with their

(Testimony of Lyndol L. Young.)

husbands, they were nieces of J. A. Thompson, a client of mine for many years, they were in my home on several occasions during the past years. These services were rendered through the year 1951, practically concluded in 1951, and as a result of the services they made a settlement with the mother-in-law which was financed by the Valley National Bank of Phoenix, Arizona; and then they were paid approximately \$400,000.00 in cash, and the mother-in-law assumed, along with the bank, as administrators of the estate, the payment of all of the taxes.

In addition to that, they received a trust fund in New York which was for the benefit of their brother for about [12] \$60,000.00. I rendered a bill for \$25,000.00, which was paid, and this proceeding I referred to, your Honor, which involved that payment of \$25,000.00 was a deductible item by them, both the sisters, and that's—

Q. You did render service, however, at your home and at the club?

A. There was limited office service.

The Court: Was the category of expense that has to do with travel, is it a category that has to do with home?

Mr. Reardon: It goes to the home and club.

Q. (By Mr. McEntee): Will you describe the activities of your method regarding the use of your home and the Los Angeles Country Club?

A. Well, my home and my club, the Los Angeles Country Club, have been used by me for many

(Testimony of Lyndol L. Young.)

years more than my downtown office; actually been a second office for me.

I don't make any claim that either the home or the club expenses are for entertainment—some of the items were used for entertaining clients when they came to see me where I worked in my home in connection with their matters.

Q. What was your relation with the Liberty Mutual Insurance Company? Did you use your home and your club in connection with that account?

A. Yes, I used my home. I have been an attorney for the Liberty Mutual Insurance Company since 1936, and during that [13] period of time I have been paid \$175,000.00, approximately, for services I rendered that company.

When I returned from New York, I came home on the boat, and Mr. P. E. Titus, Vice President and General Manager of the Claims Department of the Liberty Mutual Insurance Company of Boston was on the boat, and I became acquainted with him on the boat. I brought him over to the house for dinner; he was going to San Francisco, and I put him back on the boat to go to San Francisco. He asked me whether I'd be interested in representing his company here in Los Angeles; I indicated I would be.

So, shortly thereafter, the local office began sending their cases over to me and since that time I have represented that company.

Mr. Titus ultimately died in 1948, and he came

(Testimony of Lyndol L. Young.)

here frequently; he was in my home when he came here, never was in my office at any time. It was not merely a matter of entertainment.

Q. Did you discuss legal business?

A. I didn't know him before 1935, when I met him—and well, no, I wouldn't say only legal matters, of course not.

He became a friend of mine and we discussed matters of general interest, and had dinner, and visited together, certainly, but cases, current cases, were then pending, would be reviewed and discussed, not only with Mr. Titus but also with the personnel here in California. [14]

Mr. P. H. Wilson, Vice President of the Company in San Francisco, came down here frequently; Mr. Walker, who was originally the Regional Claims Manager, came here, and would come to my home and review matters, or go to the club, the Country Club, primarily.

In connection with the Mutual—Liberty Mutual Insurance Company, subsequently, Mr. Litchfield, who became the Regional Claims Manager in San Francisco, would come to my home for a few matters with me.

I might say that work on these insurance company cases work would be done at my home, because of the fact that most casualty cases were based on claims investigation, and if I would take the file home I would find that I could work much better on these claims files in my home than down at the office.

(Testimony of Lyndol L. Young.)

In 1941, our youngest son was stricken with polio. I immediately closed my office, and it remained closed until almost the end of 1942. The boy was confined to an iron lung, was in the hospital many months, and then came home.

During that period of time, I had to, of course, take care of the Tierney estate and the Tierney children. That was all done in my home. I did take a small office over on Wilshire Boulevard, where Mr. Beller, my accountant, took care of the books and records of those two estates, and paid the bills, paid all the household bills and other incidentals, incidental to raising two children. [15]

In the latter part of 1942, Mr. Titus called me from Boston and stated that the company, Liberty Mutual Insurance Company, in a case in which the California Shipbuilding Corporation was involved in some X-ray burn cases that had developed in the shipyards in Long Beach, and they were very serious, some 65 men who worked in the shipyards were burned through exposure to roentgen rays, and he asked me if I would undertake to represent the company in those matters. They were very serious matters, very substantial matters to the company, also to their insured, California Shipbuilding Corporation.

He said that if I would open an office, he knew my office was closed, he would send two attorneys out from the Boston office to take care of the ordinary paper work in connection with those cases, which he did.

(Testimony of Lyndol L. Young.)

So in 1942, I again opened an office in the Citizens National Bank Building, and Mr. St. Clair came out from Boston, and Mr. McWaters came out, and they occupied the offices; I did very little work in the offices.

These matters did reach the courts. A number of the cases were heard in the Federal Court before Judge Peirson Hall, and I appeared in court. A number of the matters were over in the Superior Court of the State of California here in this county. Those matters would come up and I would appear.

My boy passed away in April of 1943, and even though I had this office, kept it up, I did very, very little work [16] except in connection with the two estates, which I referred to.

Q. You entertained people at your home?

A. I didn't do any work up until 1942, I mean except these X-ray burn cases. Then along about 1944 or 1945, I again resumed the—

Q. But your connection has been continuous down through the tax year 1952, and down to the present time?

A. Well, yes, it has been—

Q. In 1952, you made a substantial amount in connection with the Liberty Mutual Insurance Company case—

A. —except for the time I would be in court, a great substantial amount of services rendered would be in my home.

Q. Did you also use the Los Angeles Country

(Testimony of Lyndol L. Young.)

Club in connection with the Liberty Mutual matters?

A. Yes, in connection with all business matters. My Club ceased to be a matter of any social interest or activity at the loss of our first son, and unfortunately, in 1948, we lost our oldest boy through polio, so insofar as—

Q. You have another client named Mr. Fewel who has paid—who paid you \$62,000.00 over the years.

A. In connection with Mr. Fewel, I met him at the Los Angeles Country Club through Mr. Denkins in 1946, and at that time he and his wife were having domestic troubles, so he was involved with her in a divorce action. I represented him along with you. That's where I met you, in connection with [17] Mr. Fewel, and I met you, as I recollect, at the Los Angeles Country Club, where Mr. Fewel was a member. This divorce action was pending in the Santa Monica Department of the Superior Court. Mr. Fewel lived in Beverly Hills in the Sunset Towers, which was near Beverly Hills in Hollywood. In connection with that action, which went over a considerable period of time in Santa Monica, all meetings with Mr. Fewel were either at the Los Angeles Country Club or in my home or in his apartment. Very few meetings took place in the office, although he did have an office in the same building at that time. Mr. Fewel's principal activity at that time was ranching in the San Joaquin Valley, so in connection with his divorce action, which

(Testimony of Lyndol L. Young.)

first started in Santa Monica and ended up in Long Beach, because Judge Rhoades, who heard it partially in Santa Monica, was transferred to Long Beach, and I went over to Long Beach over a period of some considerable time, and I also—

Q. Any conversations held at your home and also at the Los Angeles Country Club?

A. Mr. Fewel continuously was at the home. We would review what had happened in connection with the divorce action. Mr. Fewel paid me \$25,000.00 for those services. Also, Mr. Fewel was appointed as guardian of Frances Wood, guardian of her person and her estate.

Miss Wood's father, Frank M. Wood, under his will, had not, under his will, referred to and incorporated an [18] agreement which he made with Mrs. Wood when she obtained a divorce decree, to turn over to his daughter upon his death some insurance policies in the sum of about \$125,000.00, so I became her attorney, and we filed an action in the Superior Court making a claim on behalf of his daughter, Frank M. Wood's daughter, for this insurance money. The policies, at that time, were hypothecated with the First National Bank of Milwaukee, Wisconsin.

Upon filing this complaint and the service of the summons and the copy of the complaint on the local agent, the New York Life Insurance Company—Mr. Shirley, the attorney for the New York Life Insurance Company here, telephoned me and said the company would file an action in the Federal Court—

(Testimony of Lyndol L. Young.)

The Court: Do we have to go into all the issues, here? All this litigation could be endless, I'm sure. All I'm interested in is how his home was used, and the Club was used, for these things, without telling us so much of the issues of these cases.

The Witness: I think it would be better. I don't want to go into too much detail, yet I want to bring out the facts that these were essential matters.

The Court: I will give you the utmost latitude in establishing your use of your home and your Club for business.

Q. (By Mr. McEntee): Did Linnly Wood confer with you at your home and your Club? [19]

A. Yes, many, many times, in connection with the Estate of her father, and litigation growing out of that estate, and I was paid a fee of \$25,000.00 out of her guardianship estate.

Q. In connection with the Price Estate, did you use your home or the Country Club—the Los Angeles Country Club, and the Beach Club?

A. The Los Angeles Country and the Beach Club.

The Price Estate is of recent origin. Only last year, 1956, Mr. McEntee and I were associated with the Price Estate, but Mr. Price, Jack Price, Co-Executor of the Estate, came out here to represent him—and employed other counsel to represent him.

We talked to him on the telephone at his mother's house. I requested him to come to Los Angeles Country Club; his mother was a client of Mr. McEntee. He went there, and we had lunch and as a result, Mr. Price's mother came, too. He employed Mr. Mc-

(Testimony of Lyndol L. Young.)

Entee as his attorney for him, a Co-Executor, in association with myself, and as a result of services rendered up to the present time, Mr. McEntee and I have been paid \$84,000.00.

I would say that the entire relationship—the client relationship came through that meeting we had with Mr. Price at the Los Angeles Country Club.

Subsequent to that time, we have had numerous meetings with his mother, with himself and with Mr. Ferguson, the Trust Officer of the Security National Bank, the other Co-Executor. [20] Practically all the matters pertaining to the estate of his father, which is the Estate of \$3,000,000.00, we constantly held at the Country Club; none of those conferences took place at my home on North June Street, because I sold it in 1955; I didn't have it.

Q. Mr. Young, you mentioned Mr. Cord, and I have a note that during the period you were employed by him you were paid \$125,000.00. In the earning of those fees, did you feel—do you feel your home and your Club were used for business purposes.

A. Yes.

Q. In the past returns for 1948, 1949, 1950, and 1951, were these same items covering business expenses to the use of your home and your club reported and approved?

Mr. Reardon: I object, your Honor.

At this time, I'd also like to object as irrelevant all of this background. I admit that some of the background is material. I think we should be specific

(Testimony of Lyndol L. Young.)

in reference to prior years which are irrelevant and are not in the years before the court; this is solely in 1952.

The Court: What years are you asking about?

Mr. McEntee: There have been audited and approved the years 1948, 1949, 1950 and 1951. Substantial allowances were made for these business items, business expense on the use of the home and clubs.

The Court: How are you introducing it?

Mr. McEntee: I am asking him to state the amount he [21] deducted on his returns and were allowed on audit.

The Court: You may ask him.

The Witness: In 1948, \$5,456.73. That's for the expense of the home on June Street; 1949, the sum of \$4,747.76; and in 1950, the sum of \$4,998.70; 1951, the claim was made for the house and the club dues, \$12,456.08, lumped together that year.

On a review of the 1951 tax return, an additional assessment was made—paid October, 1952, of \$1,455.78. That review was handled with Mr. Beller, my accountant, and with the agents of the Internal Revenue Department, and resulted in her paying an additional assessment of \$1,455.78 which was found due for income for 1951, which I believe was \$50,000.00 for that year.

Mr. McEntee: I offer Mr. Young's check for \$1,455.78 in evidence.

Mr. Readon: Respondent objects on the ground it's irrelevant.

(Testimony of Lyndol L. Young.)

Q. (By Mr. McEntee): Mr. Young, will you briefly tell us—

The Court: What is the exhibit number; have you had this identified as an exhibit?

Mr. McEntee: No, I haven't; that must be identified now.

The Clerk: No. 2 for identification—Exhibit 2 for identification.

The Court: The Exhibit will be admitted. [22]

(Petitioner's Exhibit No. 2 was marked for identification and received in evidence.)

[See page 63.]

Q. (By Mr. McEntee): In connection with your business expenses, you took a travel deduction, Mr. Young, for \$3,500.00; will you tell us the nature of the trip in 1952?

A. It was of a business nature. There was one trip to Honolulu. I was in company with Mrs. Young. Part of the trip was business; part of the trip was to conduct an inquiry with reference to the wife of a client of mine who was then in Honolulu at the Royal Hawaiian Hotel, which inquiry was conducted. I stayed there for a period of three weeks with Mrs. Young. The fare on United was \$691.00, and we stayed at the hotel for \$60.00 per day.

The Court: How much was the entire expenses claimed for travel?

The Witness: \$3,500.00.

The Court: And was all this for this one trip?

The Witness: No, your Honor.

(Testimony of Lyndol L. Young.)

The Court: How much was claimed for this one trip?

The Witness: \$1,500.00.

The Court: And you stayed how long?

The Witness: Three weeks, 21 days.

The Court: Does the Government contest the amount of that trip as \$1,500.00 for a trip to Hawaii and staying three [23] weeks.

Mr. Reardon: No, your Honor.

Q. (By Mr. McEntee): Mr. Young, in reporting your income tax return, you did not report the total amount for these trips?

A. The travel expense in 1952 was approximately \$7,500.00. I didn't claim the full amount because all of it was not connected with actual business matters. Part of the expenses were trips I made to Boston, New York.

Q. What was the business purpose of that trip?

A. To confer with the executives of the Liberty Mutual Insurance Company, which I did, and also my daughter's husband was in the Navy in Newport, and we visited with them; Mrs. Young went with me. I allocated \$1,000.00 as a business expense for this trip. The other travel expense is connected with local matters, going to Arizona in 1952, meeting with Mrs. Thompson at LaJolla, San Diego, and trips in connection with these insurance company cases where bad accidents occurred, down at Palm Springs. I think that \$3,500.00 out of the total expense of \$7,500.00 would be a fair division of the allocated business expense.

(Testimony of Lyndol L. Young.)

Q. Will you state your position as to the depreciation of the Cadillac car?

A. This Cadillac automobile was a 1949 Fleetwood Cadillac. When Mr. Beller left my services, and went to the Air Force, he left in 1952, and is still engaged with the Air Force in [24] Europe as an auditor—Chief Auditor, I discovered that he had not taken depreciation for 1949, 1950 and 1951 on this car, so in going over my return in March, 1953, I discovered he hadn't, so I took those three years depreciation, plus the depreciation for 1952, which makes up the \$4,000.00.

There had been no prior depreciation taken on this automobile, which I used in business exclusively.

That's the depreciation on it.

Mr. McEntee: That's all I have.

#### Cross Examination

Q. (By Mr. Reardon): Now, directing your attention to the taxable year 1952, is it true you claimed \$1,500.00 for automobile expenses?

A. Yes.

Q. And \$1,132.00 was allowed, in round figures?

A. Yes, I believe Mr. Wulke and I agreed to that, and I paid the additional taxes at that time, Mr. Reardon, as I recall, so that was not an issue in this hearing on the automobile maintenance.

Q. All right. Also in that year, telephone expense of \$835.00 was allowed, is that correct?

A. Approximately; I believe so, yes.

(Testimony of Lyndol L. Young.)

Q. Now, you claimed Club expense of \$2,145.00, is that true?      A. Yes. [25]

Q. The amount approved being \$1,581.00 allowed?

A. Yes. That was the amount approved by Mr. Moore, the agent—field agent.

Q. Your travelling expense claimed, \$3,500.00?

A. Yes.

Q. Allowed, \$2,138.62?

A. I believe that is correct. Some of these figures weren't changed, but there were other figures, Mr. Wulke increased them, so I don't recall whether it's his figure or the original, and they allowed \$1,000.00 as to depreciation on the Cadillac for 1952.

Q. Let's talk about the Cadillac. That was all the Cadillac depreciation in that year? In other words, its value less a \$1,000.00 in that year?

A. Yes, that was the amount allowed.

Q. How did you get to work every day, down to the office?

A. I used this car as my car, and Mrs. Young had a car she drove.

Q. Drove the Cadillac to work and home?

A. Yes.

Q. This is the only car you ever drove?

A. Well, this was Mrs. Young's—Mrs. Young had a car; I may have driven it, too, at different times, maybe on a Sunday or weekend.

Q. Do you recall the amount of automobile expenses you [26] claimed in 1952 on Mrs. Young's car?

(Testimony of Lyndol L. Young.)

A. No, the expenses that have been claimed by me in 1952, which have been agreed upon in the settlement, which are not an issue in this case, I think, is reduced from \$1,500.00 to \$1,000.00, if my recollection—I paid the additional tax on that item, plus the telephone item, and those two items were removed from any contention in this particular hearing. It is my understanding the only issue involved is the depreciation for the prior years, and—

Q. Now, in these automobile expenses allowed, isn't it true those include expenses for parking, repairs, gasoline, etc.? A. Yes.

Q. When did you use your automobile for business purposes?

A. During the year 1952?

Q. 1952.

A. All the time, when I was here.

Q. Did you ever use it for any personal purposes?

A. Well, I probably did over a week end or a Sunday, certainly, take my wife for a drive in the park with the car.

Q. Now, also in 1952, your home phone expense was \$433.80, and you determined that \$285.31 was a business expense, and that was allowed by the Commissioner, is that correct?

A. Yes, Mr. Wulke allowed one-half of the phone bill on the house on June Street. [27]

Q. Did you have any records that showed the

(Testimony of Lyndol L. Young.)

segregation of the home phone as to business or personal calls?      A. No.

Q. Do you recall how the agent segregated the amount claimed as Club expense? In other words, you claimed \$2,154.00, and he allowed \$1,008.00, the basis for segregation being that the \$1,008.00 was the club dues.

A. That's my recollection, that he only allowed the dues.

Q. The amount disallowed were the services obtained at the club and paid for at the end of the month?      A. Yes.

Q. What clubs were those?

A. The Los Angeles Country Club and the Stock Exchange Club on Spring Street, downtown, and the Beach Club in Santa Monica.

Q. Was there another club involved, a Sports club?

A. Maybe the University Club. I didn't join the University Club until 1953. When I was in the Citizens National Bank Building on 5th and Spring, I went to the Stock Exchange Club. I moved over with Mr. McEntee in September, 1952, to the General Petroleum Building, and joined the University Club.

Q. Do you have any records of the amount you spent at the Country Club?

A. I have got my bills in the office that the agent went over; I didn't bring them with me. [28]

Q. How about the Stock Exchange Club?

(Testimony of Lyndol L. Young.)

A. Those, too, my bills and my statements and my checks, and payments of them, and——

Q. The agent went over them?

A. Yes.

Q. So, too, for the Beach Club?

A. Yes, all the clubs.

Q. Do you have any records indicating when you held any conferences at the Los Angeles Country Club in 1952? A. In 1952?

Q. All my questions are directed to 1952.

A. No, no record except the recollection of myself and Mr. McEntee, who was there with me on numerous occasions.

Q. What clients did you have conferences with in 1952 at the Los Angeles Country Club?

A. Principally with Mr. Fewell, whose divorce action I have testified about, but in 1952 conferences with Mr. Fewell at the Country Club, were in connection with the Bullock Estate.

Q. Anyone else besides Mr. Fewell?

A. In 1952?

Q. That is correct.

A. Mr. Litchfield of the Liberty Mutual Insurance Company.

Q. What occasions?

A. Well, I couldn't say definitely. He came down here [29] from San Francisco, and he liked to discuss matters at the Country Club, I would say, rather than downtown.

There were a number of cases pending in 1952 for the Liberty Mutual Insurance Company that

(Testimony of Lyndol L. Young.)

were serious, substantial matters that he came down frequently to review.

Mrs. Thompson was at the Country Club in 1952 in connection with matters growing out of the estate of her husband, who died in 1950, the estate just being wound up in 1952, and also in connection with the sale of their home property in Phoenix, Arizona, which she was negotiating a sale for in 1952, and I had been her investment counselor for many years.

Q. In 1952, your only profession and source of income was as attorney, though there was some background of discussion of investments—

A. Well, I was a Trustee of the estate—the Tierney Estate and Kelly Estate, and substantial fees came to me as Trustee. Not only as attorney, but in the capacity of fiduciary, and also as guardian of the Tierney children.

Q. With whom, in 1952, did you have conversations at the Beach Club?

A. Well, I couldn't pin that down.

Q. How about the Stock—

A. He was down here—

Q. How about the Stock Exchange?

A. Well, I had numerous conferences at the Stock [30] Exchange with Mr. Featherstone and Litchfield of the Liberty Mutual Insurance Company in connection with matters that would be coming up for trial. When we were having trials, he would come to court and during the noon hours we would go down to the Exchange for lunch and discuss—

(Testimony of Lyndol L. Young.)

Q. Never came to your office downtown?

A. Mr. Featherstone?

Q. Yes.

A. Yes, he had been to my office frequently.

There was an important matter in 1952, also, that required the use of the Stock Exchange Club, and that was a case of Goodrich Tire & Rubber Company, and associated with me in that case was the law firm of Newland, Tackabury and Johnson, and we frequently met at the Exchange; they're located here in Los Angeles.

Q. Did you have occasion to go there often?

A. I used Tackabury's office practically altogether in connection with the pleading work and the paper work in this litigation, because he was the attorney for the Rubber Company, and I was the attorney for the Liberty Mutual Insurance Company.

Q. Now, the Beach Club is in effect a country club, isn't it?

A. Well, there is no golf course there, but it's a summer club; it's a three months proposition during the summertime.

Q. Did you have occasion to take Mrs. Young to the Beach [31] Club?

A. She doesn't like the beach. I have taken her to dinner—

Q. Do you play golf?

A. I haven't played this year, I don't believe.

Q. Did you play in 1952?

A. No, no, I lost all interest in the game of golf

(Testimony of Lyndol L. Young.)

when my boy died. I don't think I've played more than three or four games in the last ten to twelve years.

Q. Did you have occasion to ever take any friends to dinner at these various clubs?

A. No, not outside of these parties or persons I mentioned from out of town who would come here to Los Angeles. I don't say exclusively not, no.

Q. How about Mrs. Young?

A. Oh, yes, of course she would. We go out there most every Sunday for our lunch.

Q. Were there occasions when she went with a friend or two and had lunch?

A. She may have herself, yes.

Q. Now, back to the trip to Boston, what was the duration of that in 1952?

A. For about two weeks I was in Boston for only two days.

Q. For the Liberty Mutual Insurance Company?

A. Yes. [32]

The Court: At this time, the Court will take a recess for about ten minutes.

(Recess taken.)

Q. (By Mr. Reardon): Now, directing your attention to the amounts claimed on the business promotional expense in 1952, and substantiating this claim you submitted cancelled checks to the agent?

A. Yes.

Q. And these include amounts for—now, correct me if I am mistaken: Butler, poultry, plumbing, cleaning, and laundry, groceries, miscellaneous

(Testimony of Lyndol L. Young.)

household, water, power and gas, garden, vegetables, yard maintenance, electric maintenance, florist and milk.

A. All those items are everything connected with the operation of the premises and the maintenance of living there.

Q. Your home there on North June Street in the year 1952 was adjacent to the Wilshire Country Club? A. Yes.

Q. Isn't that a very lovely residential area?

A. Yes, Hancock Park. I didn't belong to the Wilshire Country Club.

Q. I'm merely making that notation to show that it is a desirable residential area.

Now, in the audit of your return for 1952, amounts in excess of the amount you claimed for office supplies were [33] allowed, were they?

A. I believe Mr. Moore, the field agent, did find that I didn't add up all the expenses and office supplies; I didn't have the correct figure.

Q. Also postage?

A. I think so, Mr. Reardon. I think there were certain increases in connection with office expense.

Q. Was your basis for claiming \$1,500.00 as automobile expense in the year 1952 the fact that you had claimed the same amount in previous years, and this had been allowed?

A. Yes, I believe so. I think that amount had been claimed and allowed.

Q. Is it true that your sole reason, on the basis for taking these deductions, is that you regarded in

(Testimony of Lyndol L. Young.)

view of your gross income these amounts were reasonable?

A. Well, I felt that they were reasonable to the extent of the cost of the maintenance of the premises, and there was a reasonable allocation to the over-all cost, yes, and I also thought in relation to the income received in the year 1952, it was a reasonable allocation of expense. The total expense of maintaining my home in 1952 was approximately \$20,000.00.

Q. Now, as to the operation of your downtown office, were you in with any other attorneys during your—

A. Up until September of 1952, my office was located at the Citizens National Bank at 5th and Spring.

Q. That's where your legal secretary was? [34]

A. Yes, that is correct, and that is where my accountant worked.

Q. Were any of these employees in your home for business purposes?

A. Oh, yes, Mr. Beller was there many times.

Q. He is the accountant?

A. The accountant, yes.

Q. How about the secretary?

A. I don't believe Mrs. Petri, who was with me in 1952, was ever in my home.

Miss Osborne was in my home on numerous occasions.

Q. In 1952?

A. No, she wasn't with me in 1952.

(Testimony of Lyndol L. Young.)

Q. Did you have any office machinery in your home, typewriters?

A. Telephones, was all.

Q. How about your business correspondence, was that all filed from your office?

A. Yes, whatever dictation would take place would many times be over the telephone to my secretary, but the letters would be transcribed in the office. I have a library and room devoted entirely to the office.

In September 1952, I went into an office with Mr. McEntee, and we have continued that association since 1952 at the General Petroleum Building.

Mr. McEntee is a tax lawyer experienced in tax work.

Q. Also in the auditing and recomputation of your return weren't additional amounts allowed for office supplies and so-called miscellaneous office expense?

A. I think so, Mr. Reardon, periodicals.

Q. And legal and accounting expenses?

A. I believe there were some slight increases on those various items.

Q. Two last questions, Mr. Young: Is it true that you have no records, or kept no records, in 1952, of the business conferences you had at the various places?

A. No, I have no written records.

Q. And your entire basis of claim of these deductions was your estimate of these amounts as

(Testimony of Lyndol L. Young.)

being reasonable and in relation to your gross income?

A. Yes, and in addition to that, to the matters, from my records, which are reviewed, covering the service, my legal service, and in cases I handled in 1952, the amount of work that appeared from those records I did in my home, and at the Country Club as well, and the Stock Exchange Club.

Q. One of the fees that you received in 1952 was approximately \$25,000.00 from this Arizona—the Filor matter? A. Yes.

Q. And that was received in 1952?

A. January of 1952. [36]

Q. Wasn't all the work on that done prior to 1952?

A. Yes, the work was all done, completed in 1951.

Q. These other cases that you and your clients discussed in your background, Filor, Hiller, Tierney, and so forth, these were all transpired before 1952?

A. Well, no, the Hiller matter was in 1951, and the payment was made in 1952.

Mr. Reardon: The Respondent rests, your Honor.

#### Redirect Examination

Q. (By Mr. McEntee): Mr. Young, in connection with the use of your clubs for business purposes, do you have conferences with bankers, brokers, investment counsel, and other business men while you are at those clubs? A. Yes.

(Testimony of Lyndol L. Young.)

Q. And did you find that essential or helpful in your law practice and investment advisory service?

A. Yes, decidedly so. It's a facility that I wouldn't have available to me except out at the Country Club.

In addition, there are a number of doctors at the Los Angeles Country Club I know, and I try a considerable amount of malpractice cases involving hospitals and members of the medical profession.

Q. In regard to Mr. Reardon's question that these amounts attributed to business expenses being regarded as reasonable in [37] relation to your income, I want to ask you if there is any question in your mind these amounts were actually spent—considered—taken as expenses allowed, as expenses over a period of many years, and you have the checks and presented the revenue agent—

A. Yes, we have gone over all the checks and bills.

Mr. McEntee: As an associate of Mr. Young, I would just say briefly that he spends more time and does more work and makes more money out of his activities in his home and at his club than he does at the office.

Mr. Reardon: I object, your Honor. If counsel wishes to take the stand—

Mr. McEntee: It has been my experience, that's all.

The Court: I guess that's all.

Mr. Reardon: I have a question.

(Testimony of Lyndol L. Young.)

Recross Examination

Q. (By Mr. Reardon): All of these checks that you presented to the Revenue Agent were made out to cash, is that not correct?

A. Oh, no, the checks were made out to cash and covered cash disbursements for this \$3,100.00.

Q. But the others were made out either to the clubs—

A. Oh, yes, directly to the payee, whoever it might be, in connection with the particular expense involved. There was only \$3,000.00 involved in the checks to cash. [38]

The Court: I guess that's all.

The Witness: Thank you, your Honor.

Mr. Reardon: Respondent rests.

The Court: The cause is submitted. Do you wish to file briefs?

Mr. McEntee: No, I don't think so; it's just a matter of fact.

Mr. Reardon: Yes, your Honor.

The Court: Under the rules, it's 45 days.

Mr. Reardon: Respondent has no objection to filing a simultaneous brief.

The Court: You don't need to, but you can file simultaneous briefs in 45 days.

The Clerk will give you the dates.

The Clerk: July 22nd for the original briefs; August 21st for the reply briefs.

(Whereupon, at 12:30 o'clock, p.m., the hearing in the above entitled matter was closed.)

[Endorsed]: Filed July 9, 1958.

[Title of Tax Court and Cause.]

### JOINT MOTION TO CORRECT THE RECORD

The parties move jointly that the Court correct the trial record to read as follows:

P. 9, Line 1: “\$7,000.00” should be changed to “\$70,000.00.”

P. 9, Line 2: “\$45,000.00” should be changed to “\$40,000.00.”

P. 9, Line 6: Between the words “Mrs.” and “Iten” insert the word “Katherine”; and in lieu of the word “Catherine”, insert the words “her daughter Mrs.”.

P. 9, Line 11: “We” should be changed to “I”.

P. 9, Line 17: “Him” should be changed to “my”.

P. 9, Line 24: The word “Tierney” should be omitted.

P. 10, Line 20: The word “Tierney” should be omitted.

P. 11, Line 3: Omit the word “both”; between the words “Estate” and “Mrs.” insert the word “of” in lieu of “and”; insert the word “Iten” in lieu of “Tierney”.

P. 11, Line 9: After the word “sisters” insert the words “paid you \$15,000.00”.

P. 11, Line 6: “1942” should be changed to “1952”.

P. 11, Line 10: At the beginning of the line, before the word “the”, insert the words “in 1952,.”.

P. 11, Line 17: Correct the name “Litten” to read “Lytten”.

P. 11, Line 18: The words “ease of” should be changed to “decision”; the word “had” should be changed to “has”.

P. 11, Line 19: Correct the name “Lane” to read “Laine”.

P. 11, Line 21: Correct the name “Litten” to read “Lytten”.

P. 12, Line 14: Between the words “them” and “their” and in lieu of the words “would be in there, and” insert the words “were in my home with”. Between the words “husbands,” and “nieces”, and in lieu of the word “with”, insert the words “they were”.

P. 12, Line 15: Between the words “years,” and “at”, insert the words “they were in”. The word “for” should be changed to “on”.

P. 12, Line 17: The word “included” should be changed to read “concluded”. Between the words “concluded” and “1951”, insert the word “in”.

P. 13, Line 1: Change “\$6,000.00” to “\$60,000.00”. Between the words “I” and “for”, and in lieu of the words “rented a building”, insert the words “rendered a bill”. Change “\$20,000.00” to “\$25,000.00”.

P. 13, Line 3: Change “\$20,000.00” to “\$25,000.00”.

P. 13, Line 17: Between the words “claim” and “either”, insert the word “that”.

P. 13, Line 18: Between the words “expenses” and “some”, and in lieu of the words “have any substantial claims”, insert the words “are for entertainment”.

P. 14, Line 1: “\$17,000.00” should be changed to “\$175,000.00”.

P. 14, Line 17: Between the words “was” and “merely”, insert the word “not”.

P. 15, Line 10: Between the words “that” and “these”, insert the words “work on”.

P. 16, Line 16: Correct the name “Sinclair” to read “St. Clair”.

P. 16, Line 17: Correct the name “Waters” to read “McWaters”.

P. 17, Line 22: Change the name “Wulke” to read “Denkins”.

P. 18, Line 14: Change the name “Hodd” to read “Rhoades”.

P. 18, Line 24: Change “Mrs. Wood’s” to read “Miss Wood’s”.

P. 19, Line 4: Change “his” to “her”.

P. 19, Line 7: Between the words “were” and “with”, insert the word “hypothesized”.

P. 19, Line 24: Correct the name “Linny” to read “Linnly”.

P. 20, Line 13: Between the words “talked” and “on”, insert the words “to him”.

P. 20, Line 16: Change “Mrs. Price’s” to read “Mr. Price’s”.

P. 21, Lines 7-12: Change the wording of these lines to read “that during the period you were employed by him you were paid \$125,000.00. In the earning of those fees, did you feel—do you feel your home and your Club were used for business purposes? A. Yes. Q. In the past returns for 1948, 1949, 1950, and 1951, were these same items covering busi-

ness expenses to the use of your home and your club reported and approved?"

P. 21, Line 20: Change the word "proved" to "approved".

P. 21, Line 22: Change the word "this" to "these", and change the word "item" to "items".

P. 22, Line 1: Change the word "paid" to "deducted" and add "on his returns and were allowed on audit".

P. 22, Line 11: In lieu of the words "plus, in 1952" insert the words "and resulted in her".

P. 22, Line 12: Between the words "assessment" and "which", insert the words "of \$1,455.78".

P. 22, Line 13: After Line 13, insert these words "Mr. McEntee: I offer Mr. Young's check for \$1,455.78 in evidence."

P. 23, Line 5: Omit the words "I want to emphasize it".

P. 23, Line 6: Change the first word "was" to read "There was".

P. 24, Line 6: Between the words "the" and "expense", insert the word "travel".

P. 24, Line 7: In lieu of the words "they weren't", insert the words "all of it was not".

P. 24, Line 8: Omit the words "I mean", and in lieu of the word "trips", insert the word "expenses".

P. 24, Lines 13-20: Change the wording of these lines to read "was in the Navy in Newport, and we visited with them; Mrs. Young went with me. I allocated \$1,000.00 as a business expense for this trip. The other travel expense is connected with

local matters, going to Arizona in 1952, meeting with Mrs. Thompson at LaJolla, San Diego, and trips in connection with these insurance company cases where bad accidents occurred, down at Palm Springs. I think that \$3,500.00 out of the total expense of \$7,500.00 would be a fair division to be allocated for business expense."

P. 25, Line 4: Between the words "three" and "depreciation", insert the word "years".

P. 27, Line 5: Change the words "Mr. Kelly" to "I".

P. 28, Line 20: Change "1949" to "1952", and after the last word of this line, add "General".

P. 29, Line 12: Between the words "except" and "recollection", and in lieu of the word "any", insert the word "the". Between the words "of" and "Mr. McEntee", insert the words "myself and".

P. 29, Line 17: Omit the word "the".

P. 29, Line 18: Omit the words "it was", and in lieu thereof, insert the word "were".

P. 31, Line 1: Omit the words "Peterson, and at", and in lieu thereof, insert the words "Featherstone and Litchfield of".

P. 31, Line 7: Change "Feltston" to "Featherstone".

P. 31, Line 13: Change "Newland, Thackaberry and Johnston" to "Newlin, Tackabury and Johnston".

P. 31, Line 16: Change "Thackaberry's" to "Tackabury's".

P. 32, Line 8: Change "I was a young boy" to read "my boy died".

P. 32, Line 16: Change "We'd" to read "We", and add the word "most" after the word "there".

P. 34, Line 20: After the last word "expense.", add this sentence, "The total expense of maintaining my home in 1952 was approximately \$20,000.00."

P. 35, Line 16: Omit the word "Dictaphones" and capitalize the word "Telephones" as the first word of the sentence.

Wherefore, it is prayed that this motion be granted.

/s/ FRANCIS J. McENTEE,  
Counsel for Petitioners

/s/ NELSON P. ROSE,  
Chief Counsel, Internal Revenue  
Service, Counsel for Respondent.

[Stamped]: Granted August 14, 1957. /s/ John  
E. Mulroney, R. Judge.

Served and Entered August 19, 1957.

[Endorsed]: T.C.U.S. Filed August 13, 1957.

JOINT L-111 No. 1-A

FORM 1040  
U. S. Treasury Department  
Internal Revenue ServiceU. S. INDIVIDUAL INCOME TAX RETURN  
FOR CALENDAR YEAR 1952

1952

Do not write in these spaces

Serial No. 263025840 (Address stamp)

BB-4A

1-10-55

139.80

84.27

or taxable year beginning 1952, and ending 1952

Name Lyndol L. and Mildred W. Young

(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both.)

HOME ADDRESS 153 No. June Street

(PLEASE PRINT. Street and number or rural route)

Los Angeles

California

(City, town or post town)

(Postal zone number)

Atty-at-Law &amp; Trustee

Occupation Lawyer

Social Security No. 85 MAR 16 1953

Check below if at the end of your taxable year you or your wife were—

65 or over  Blind  Number of exemptions for you65 or over  Blind  Number of her (or his) exemptions

Name and address if different from yours

Your  
exemptions

If your wife (or husband) had no income, or if this is a joint return, list also her (or his) name.

A Lyndol L. Young

B Mildred W. Young

(Your wife's name—don't list exemptions claimed on another return)

C. List names of your children (including stepchildren and legally adopted children) with 1952 gross incomes of less than \$500 who received more than one-half of their support from you in 1952. See Instructions.

Enter number of children listed

D. Enter number of exemptions claimed for close relatives listed in Schedule I on page 2

2

E. Enter total number of exemptions claimed in A to D above

2. Enter your total wages, salaries, tips, commissions, and other compensation received in 1952, before payroll deductions. Persons claiming self-employment or reimbursed expenses, see Instructions.

Final Employer's Name

Where Employed (City and State)

Total Wages

Income Tax Withheld

Enter total	\$ 27,665.25	\$ 27,665.25

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here

4. Add income shown in items 2 and 3, and enter the total here

How to  
figure  
the tax

(Before figuring your tax, see Schedule J for "Head of Household." If you claim such status, check here .)  
**IF YOUR INCOME WAS LESS THAN \$5,000.**—Use the tax table on page 4 *unless you itemize deductions*. The table allows about 10 percent of your income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.  
**IF YOUR INCOME WAS \$5,000 OR MORE.**—Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

- (A) Enter your tax from table on page 4, or from line 13, page 3. **5. 7,330.00**
- (B) Enter your self-employment tax from line 35, separate Schedule C.
6. How much have you paid on your 1952 income tax?  
 (A) Bypass withhold (in item 2, above). Attach Original Form W-2.  
 (B) By payments on 1952 Declaration of Estimated Tax (include any overpayment on your 1951 tax not claimed as a refund). **6. 7,072.52**
7. If your tax (item 5) is larger than payments (item 6), enter *balance of tax due here*. This balance must be paid in full with return. **7. 072.52**
8. If your payments (item 6) are larger than your tax (item 5), enter the *overpayment here*. **8. 257.48**

Enter amount of item 8 you want \$

(Refund)

(Credited on 1953 estimate of tax)

Do you owe any prior year Federal tax for which you have been billed? (Yes or No) **No** Is your wife (or husband) making a separate return for 1952? (Yes or No) **No** If "yes," write her (or his) nameIf you have filed a return for a prior year, state latest year **1951** Where filed? **Los Angeles**To which director's (formerly collector's) office did you pay amount claimed in item 6 (B), above? **Los Angeles**

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

(Signature of person, other than taxpayer, preparing this return)

(Date)

(Signature of taxpayer)

(Date)

(Name of tax employer, if any)

To ensure split-income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN. **BB-4A**



Joint Exhibit 1-A  
(continued)

LYNDOL L. YOUNG

A Statement attached to and made a part  
of Federal and California Income Tax  
Returns for the calendar year 1952.

SCHEDULE C-2

Subscriptions and periodicals	\$ 524.69
Legal and Accounting	1,500.00
Automobile Expense	1,500.00
Office Supplies	270.00
Telephone and Telegraph	655.00
Legal Association dues	69.00
Postage	79.00
Workmen's Compensation	48.39
Clubs	2,154.00
Business promotional expense, 138 No. June Street-	9,453.62
Travel	3,500.00
Miscellaneous	707.92
<b>T O T A L</b>	<b><u>\$21,691.62</u></b>

2







## Joint Exhibit No. 1-A--(continued)

Page 3

ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW—  
If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

Contributions	Bevila Foundation and others to whom gifts or money were given to help others to finance, etc., itemized	\$ 175.00
	Community Chest	10.00
	St. Vincent's Hospital Auxiliary	12.50
	Sheriff's Association	
	Allowable Contributions (not in excess of 20 percent of item 4, page 1)	\$ 197.50
Interest	Interest Security—First National Bank	\$ 405.27
	Actna Life Ins. Co.	110.53
	State of California	10.00
	U. S. Government	43.67
	Total Interest	\$ 589.81
Taxes	Los Angeles County	\$ 1,029.73
	State of Calif. Income tax	379.73
	State of Calif. Sales tax	765.00
	Fu. Assess. C. 70, Sec. Sec. 39.75, Safe Dep.	43.67
	Total Taxes	\$ 2,154.21
Losses from fire, storm, or other casualty, or theft		\$
	Total Allowable Losses (not compensated by insurance or otherwise)	\$
Medical and dental expenses (if over \$5 see Instructions)		\$
	Net Expenses (not compensated by insurance or otherwise)	\$
	Enter 5 percent of item 4, page 1, and subtract from Net Expenses	\$
	Allowable Medical and Dental Expenses. See Instructions for limitation	\$
Miscellaneous (See Instructions)	Premium Accident & Health Ins. Policy	\$ 169.27
	Total Miscellaneous Deductions	\$ 169.27
	Total Deductions	\$ 3,090.79

## TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 4, page 1. This is your Adjusted Gross Income	\$ 27,675.95
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is \$5,000 or more: (a) married persons filing separately enter \$500, (b) all others enter 10 percent of line 1, but not more than \$1,000	\$ 3,050.75
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	\$ 24,575.16
4. Multiply \$600 by total number of exemptions claimed in item 1E, page 1. Enter total here	\$ 1,200.00
5. Subtract line 4 from line 3. Enter difference here. (If line 1 includes partially tax-exempt interest, see Instructions)	\$ 23,375.16
If line 5 is not more than \$2,000	
6. Enter 22.2 percent of amount shown on line 5 and disregard lines 7, 8, and 9	\$
If line 5 is more than \$2,000	
7. And you are a single person, a married person filing separately, or a head of household Single persons and married persons filing separately use Tax Rate Schedule I on page 12 of Instructions to figure tax on amount on line 5; heads of household use Tax Rate Schedule II	\$
8. And you are filing a joint return	
(a) Enter one-half of amount on line 5	\$ 11,687.53
(b) Use Tax Rate Schedule I on page 12 of Instructions to figure tax on amount on line 6 (a)	\$ 3,655.00
(c) Multiply amount on line 8 (b) by 2	\$ 7,330.00
9. If alternative tax computation is made, enter here tax from separate Schedule D	\$
Disregard lines 10, 11, and 12, and copy on line 13 the same figure you entered on line 6, 7, 8 (c), or 9, unless you used itemized deductions	
10. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	\$
11. Enter here any income tax paid at source on tax-free covenant bond interest	\$
12. Add the figures on lines 10 and 11 and enter the total here	\$
13. Subtract line 12 from line 6, 7, 8 (c), or 9. Enter difference here and as item 5 (A), page 1	\$ 7,330.00

4



MENDOL L. YOUNG

3079  
No

October 2<sup>nd</sup> 1952

564 π

1001, 1015

PAPERS 100-101

CHARGE	GROSS AMOUNT	DISCOUNT	AMOUNT PAYABLE
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1 - HEAD OFFICE - 16-11  
457 South Spring Street  
CITIZENS BANK  
TRUST & SAVINGS

## LOS ANGELES

PAY TO ORDER OF  
LOS ANGELES BRANCH  
MURKIN & CO., INC.  
ATTORNEYS  
FOR THE  
INTERNAL REVENUE  
COLLECTOR  
OF THE UNITED STATES  
IN THE  
CITY OF LOS ANGELES  
CALIFORNIA  
20  
COLLECTOR INTERNAL REVENUE  
BOSTON, MASS.



U. S. Treasury Department, Internal Revenue Service, Chief, Audit Division, P. O. Box 231, Main Office, Los Angeles 53, California.

Office of Director of Internal Revenue

InReplying Refer to: A:R:30D MI 8111, Ext. 385,  
Room 1339, Federal Building

Mr. Lyndol L. Young Aug. 24, 1954

Mrs. Mildred W. Young

138 North June Street, Los Angeles 4, California

Dear Mr. and Mrs. Young:

The attached report, which has been carefully reviewed by this office, discloses certain adjustments or conclusions resulting from the examination of the return(x) for the taxable year(x) indicated therein.

If you accept the findings, please execute the enclosed agreement form and return it to this office promptly. If you do not accept the findings, you may, within 30 days from the date of this letter, file a protest in accordance with the enclosed instructions. Any protest filed will be given careful consideration and, if requested, a conference will be granted by the Appellate Division of the District Commissioner's office.

Submission of the agreement form will expedite assessment of the proposed deficiency and stop the running of interest thereon 30 days after the receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier. If desired, payment of the proposed deficiency may be

made without awaiting assessment by making remittance therefor payable to the Director of Internal Revenue, P. O. Box 231, Main Office, Los Angeles 53, Calif. at the address shown above, enclosing this letter or a copy thereof. The remittance should include interest on the additional tax (exclusive of penalties, if any) computed at 6% per annum from the due date of the return to the date of the payment.

This is not a statutory notice of deficiency. If, however, upon the expiration of the 30-day period you have not submitted the agreement form, or a written protest, or you have not advised that the deficiency has been paid or will be paid upon notice and demand, a statutory notice will then be sent you as provided by law.

Prompt execution and return of the enclosed receipt form indicating your position with respect to the findings disclosed by the report will be greatly appreciated.

**Important:** It is essential that communications transmitting protests or agreements relative to this letter be addressed to the Director of Internal Revenue, Audit Division, P. O. Box 231, Main Office, Los Angeles 53, California, Attention A:R:30D.

Very truly yours,

/s/ R. A. RIDDELL,  
Director of Internal Revenue.

hmg

Enclosures: Report of Examination, Agreement Form, Receipt Form, Instructions.

Name of Taxpayer: Lyndol L. and Mildred W. Young.

Date of Report: Aug. 6, 1954.

Examining Officer: F. Howard Morris.

Preliminary Statement of Total Tax Liability  
Year 1952.

Adjustments Proposed by this Report: Tax, Deficiency: 9456.28.

\* \* \* \* \*

### Preliminary Statement

The principal cause for the deficiency is the disallowance of expenses claimed as Promotional expense—138 No. June Street.

Taxpayer's are married and reside at 138 No. June Street, Los Angeles. They have no dependents.

The case has been discussed with the taxpayer Lyndol L. Young who does not agree with the findings. The taxpayers contention is that all amounts expended by him during the year are for business purposes.

### Schedule 1

Name: Lyndol L. and Mildred W. Young.

Year ended 12-31-52.

### Adjustments to Net Income

Net income as disclosed by return: \$24,575.16.

As corrected: \$42,094.01.

Net adjustment as computed below: \$17,518.85.

Unallowable deductions and additional income:

(a) Clerical error: \$200.00.

(b) Unreported income: \$1,150.00.

- (c) Auto expense: \$1,000.00.
- (d) Telephone and telegraph: \$285.31.
- (e) Clubs: \$1,146.00.
- (f) Business promotional expense—138 No. June St.: \$9,493.62.
- (g) Travel: \$1,341.38.
- (h) Accident and Health Premium: \$169.27.
- (i) Depreciation: \$3,000.00.

Total: \$17,785.58.

Nontaxable income and additional deductions:

- (j) Subscription and Periodicals: \$14.56.
- (k) Legal and accounting: \$50.00.
- (l) Office supplies and miscellaneous: \$200.17.
- (m) Postage: \$2.00.

Total: \$266.73.

Net adjustment as above: \$17,518.85.

#### Schedule 1-A

Name: Lyndol L. and Mildred W. Young.

Year: 1952.

#### Explanation of Items

- (a) Clerical error: \$200.00.

Adjusted Gross income on return 27665.95.

Corrected adjusted gross income: 27865.95.

Addition to net income: \$200.00.

Taxpayers total other business deductions subtracted from gross receipts leaves 27865.95 instead of 27665.95 as reported on the return resulting in an understatement of Adjusted gross income of \$200.00, therefore, this amount is added to net income.

- (b) Unreported income: \$1,150.00.

Taxpayer failed to include \$1,000.00 of trust income and \$150.00 insurance fee in his gross receipts. The total of these two items \$1,150.00 is hereby added to net income.

(c) Auto expense: \$1,000.00.

Claimed on the return: \$1,500.00.

Allowed: \$500.00.

Addition to net income: \$1,000.00.

Taxpayer's claim of \$1,500.00 auto expense is reduced to \$500.00 as taxpayer is also entitled to depreciation of \$1,000.00 which is allowed (see item "i" of this report), and taxpayer failed to substantiate more than \$500.00 of business automobile expense; therefore, the amount of \$1,000.00 is returned to net income.

(d) Telephone and telegraph: \$285.31.

Claimed on the return: \$835.00.

Allowed: \$549.69.

Addition to net income: \$285.31.

Taxpayers office telephone expense amounted to \$549.69 and this amount is allowed as a deduction on the return. Taxpayer failed to show other telephone and telegraph expense connected with his business so the excess of \$285.31 over the allowable office expense is returned to net income.

(e) Clubs: \$1,146.00.

Claimed on the return: \$2,154.00.

Allowed: \$1,008.00.

Addition to net income: \$1,146.00.

Taxpayer claimed club expense which included dues and amounts paid on bills from the clubs. The amount allowed as a business expense is the club

dues of \$1,008.00. The remainder is disallowed as no business connection was shown by the taxpayer for these other amounts of \$1,146.00 paid to the clubs.

(f) Business promotion expense—138 No. June St.: \$9,493.62.

Claimed on the return: \$9,493.62.

Allowed: None.

Addition to net income: \$9,493.62.

These expenses of \$9,493.62 were found to consist of household operating expenses such as utilities, personal cleaning bills, vegetables, meat, groceries, butler's salary, plumbing and electrical bills for the house, flowers, and upkeep of the grounds around the house. The amount of \$9,493.62 is disallowed as being a personal family expense for which deduction is denied under section 24 (1) IRC. The amount is also disallowed as not being an ordinary and necessary business expense under section 23 (a) IRC.

(g) Travel: \$1,341.38.

Claimed on the return: \$3,500.00.

Allowed: \$2,158.62.

Added to net income: \$1,341.38.

The amount added to net income represents  $\frac{1}{2}$  the cost (\$2,682.76) of a trip to Honolulu with taxpayers wife. Taxpayer and wife spent three weeks in Honolulu and failed to show that the trip was conducted for business purposes. The amount of \$1,341.38 is considered to be a personal family expense for which deduction is denied under section 24 (1) IRC.

(h) Accident and Health Premium: \$169.27.

Claimed on the return: \$169.27.

Allowed: None.

Addition to net income: \$169.27.

Taxpayer claimed as a miscellaneous deduction on Page 3 of the return \$169.27 expended for accident and health insurance premiums. This constitutes a medical expense. The amount expended does not exceed 5% of taxpayers adjusted gross income as provided in Section 23 (x) (1) IRC, which excess is deductible; therefore the amount of \$169.27 is returned to net income.

(i) Depreciation: \$3,000.00.

Claimed on the return: \$4,000.00.

Allowed: \$1,000.00.

Addition to net income: \$3,000.00.

Taxpayer claimed \$4,000.00 depreciation deduction on an automobile costing \$5,200.00 which taxpayer purchased in December 1948. The period used for depreciation was five years. Taxpayer was attempting to take depreciation allocable to four years in this year 1952 as he stated that he had not previously taken depreciation on the car. In previous years taxpayer had made an estimate of total automobile expense of \$1,500.00 per year. Section 23 (1)-5 (b) of the Regulations provides that a taxpayer is not permitted to take advantage in later years of his prior failure to take any depreciation allowance; therefore the amount of \$3,000.00 which represents depreciation allowance for previous years is hereby disallowed. (In this case it also presumed that the taxpayer's estimate of automobile expense in prior years included depreciation).

(j) Subscriptions and Periodicals: (\$14.56).

Claimed on the return: \$524.69.

Allowed: \$539.25.

Deduction from net income: (\$14.56).

Taxpayer submitted checks allocable to this expense amounting to \$539.25; therefore the excess of \$14.56 is allowed as an additional deduction from net income.

(k) Legal and accounting: (\$50.00).

Claimed on the return: \$1,800.00.

Allowed: \$1,850.00.

Deduction from net income: (\$50.00).

Taxpayer submitted checks allocable to this expense amounting to \$1,850.00; therefore the excess of \$50.00 is allowed as an additional deduction from net income.

(l) Office supplies and miscellaneous: (\$200.17).

Claimed on the return: \$1,677.92.

Allowed: \$1,878.09.

Deduction from net income: (\$200.17).

Taxpayer submitted checks allocable to this expense amounting to \$1,878.09; therefore the excess of \$200.17 is allowed as an additional deduction from net income.

(m) Postage: (\$2.00).

Claimed on the return: \$79.00.

Allowed: \$81.00.

Deduction from net income: (\$2.00).

Taxpayer submitted checks allocable to this expense amounting to \$81.00; therefore the excess of \$2.00 is allowed as an additional deduction from net income.

**Schedule No. 2**

Name of Taxpayer: Lyndol L. and Mildred W. Young.

Year ended: 12/31/52.

**Computation of Income Tax for Individuals  
Not Using Tax Table**

Net income from Schedule No. 1: \$42,094.01.

Less: Exemption (2)  $\times$  \$600: \$1,200.00.

Income subject to tentative tax: \$40,894.01.

Income subject to tentative tax if separate return;  
or one-half of such income if joint return: \$20,-  
447.00.

Tentative tax: \$8,393.14.

Less: Adjustment for tax on partially tax-exempt  
interest: —.

Balance of tentative tax: \$8,393.14.

Combined normal tax and surtax: \$8,393.14.

Multiply amount of combined tax by 2 if joint  
return: \$16,786.28.

\* \* \* \* \*

Balance of income tax liability: \$16,786.28.

Income tax liability disclosed by return: \$7,330.00.

Deficiency in income tax: \$9,456.28.

T. C. Memo. 1957-222

Tax Court of the United States

Lyndol L. Young and Mildred W. Young, Petitioners, vs. Commissioner of Internal Revenue, Respondent.

Docket No. 57876. Filed Nov. 29, 1957

Francis J. McEntee, Esq., for the petitioners.  
Eugene F. Reardon, Esq., for the respondent.

**MEMORANDUM OPINION**

Mulroney, Judge: The respondent determined a deficiency in income taxes due from petitioners for the calendar year 1952 in the amount of \$7,705.78. The sole issue in the case is whether petitioners are entitled to certain deductions, in addition to those allowed by the respondent, for club dues and expenses, travel expenses, business promotional expenses at petitioners' residence, and automobile depreciation. Other determinations of the respondent are not in issue and they may be reflected in the Rule 50 computation.

Petitioners, Lyndol L. Young and Mildred W. Young, are husband and wife, residing in Los Angeles, California. They filed their joint income tax return for the year 1952 with the district director of internal revenue, at Los Angeles, California. Lyndol L. Young, hereinafter referred to as petitioner, is a lawyer and in said income tax return he listed the following business deductions which are in question here:

Clubs: \$2,154.00.

Business promotional expense—138 North June Street: \$9,493.62.

Travel: \$3,500.00.

Depreciation: \$4,000.00.

The respondent allowed a portion of each item and the record here, consisting only of petitioner's testimony, is designed to establish that additional allowances should have been made. Since the question is purely one of fact, upon which petitioner had the burden of proof, we can discuss the evidence with respect to each item separately.

### Clubs

Petitioner belonged to the Los Angeles Country Club, the Stock Exchange Club in downtown Los Angeles, and the Beach Club in Santa Monica. He claimed \$2,154 of club dues and expenses as business expenses for 1952. The Commissioner allowed \$1,008 and disallowed \$1,146. There was no evidence as to the use of the Beach Club for business. There was some evidence of a few business conferences at the Los Angeles Country Club and the Stock Exchange Club. The evidence consisted merely of petitioner's recollection of such conferences as no records were kept of such business conferences and no records of business expenditures at the clubs. Both petitioners frequently dined at the clubs (most every Sunday) and the clubs were used to some extent by both petitioners for social and personal purposes.

In view of the meager and unsatisfactory evidence of the use of the clubs for business purposes, re-

spondent's determination that an amount of \$1,008 should be allowed for club expenses was reasonable. We hold respondent was right in disallowing \$1,146 club expenses.

#### Business Promotional Expenses

The sums expended under this item, claimed to be \$9,493.62, were expenditures in connection with the operation of petitioners' personal residence at 138 North June Street, Los Angeles, California. The amount claimed seems to be an allocation of a portion of the total household expenses, consisting of expenditures for servants, groceries, utilities, and yard expense, and other such items. On this point we have only the general testimony of petitioner that he carried on a substantial portion of his law practice from his home. He had a downtown law office but he testified some clients came to his home during the year involved. The respondent allowed \$750 for this item.

Petitioner's main argument to establish this item is (1) his claim is reasonable in view of his gross income (\$61,000), and (2) that similar amounts had been allowed in previous years. There is nothing to his first argument as his burden was to show actual expenditures for a business purpose. His burden is not satisfied merely by testifying a substantial portion of his law business was carried on in his home and then allocating a certain sum from gross income as home business expense. As to the second argument, the law is clear that respondent is not bound by determinations of his agents for earlier years.

South Chester Tube Company, 14 T.C. 1229. See also H. L. McBride, 23 T.C. 901. In our opinion, petitioner failed to show anything beyond a minimal use of his home for business purposes and in view of the nature of the evidence presented, we believe that the respondent's allowance of \$750 for this item was reasonable. We hold he was right in disallowing the balance of the claimed deduction.

### Travel Expenses

Petitioner claimed a deduction for travel expenses in the sum of \$3,500. Respondent allowed \$2,158.62. The vague and inconclusive evidence petitioner introduced would hardly support the allowance granted. It consists merely of statements by the petitioner that he spent the sums claimed on business trips. He mentioned a few trips such as a trip he said he made to Boston to confer with a client. His wife accompanied him and they visited their daughter in Newport, Rhode Island. He and his wife also journeyed to Hawaii where they stayed in a \$60 a day hotel room for three weeks. He testified "part of the trip was to conduct an inquiry with reference to the wife of a client of mine who was then in Honolulu at the Royal Hawaiian Hotel, which inquiry was conducted". He claimed \$1,500 of the expenses of this trip as business travel expense. Respondent conceded that such a three week trip to Hawaii would cost \$1,500, but the proof that it was a business trip is insufficient. The rest of the evidence on this item is nothing more than a general statement of petitioner that the balance of the travel

expense is connected with "local matters, going to Arizona in 1952 \* \* \* La Jolla, San Diego, and trips in connection with these insurance company cases where bad accidents occurred, down at Palm Springs."

The almost complete lack of evidence to support the claimed travel expenses means respondent's determination disallowing a deduction of \$1,341.38 for travel expenses is sustained.

#### Depreciation

Petitioner claimed a deduction for depreciation in the amount of \$4,000. This was for a Cadillac automobile which petitioner testified he used partly in his business. Respondent allowed \$1,000 for this item as a deduction for depreciation of the car in 1952. Petitioner's argument for the additional amount of \$3,000 is that he had used the car in his business for three years prior to 1952 and had claimed no deduction for depreciation of the car in those years. His deduction for depreciation for the car is at the rate of \$1,000 a year for four years.

Respondent was correct in disallowing any deduction for depreciation in prior years. The deduction for depreciation must be taken in the year in which it occurs and cannot be taken in later years by reason of a taxpayer's failure to deduct any depreciation allowance in prior years. *Whitelite Electric Co.*, 18 B.T.A. 934; *Motor Car Supply Co.*, 9 B.T.A. 556.

Decision will be entered under Rule 50.

Served and Entered December 13, 1957.

Tax Court of the United States  
Washington

Docket No. 57876

LYNDOL L. YOUNG and MILDRED W.  
YOUNG, Petitioners,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

**DECISION**

Pursuant to the Court's Memorandum Opinion, filed November 29, 1957, the respondent filed a proposed computation of tax on February 11, 1958, and petitioners filed an acquiescence therein on April 3, 1958. Now, Therefore, it is

Ordered and Decided: That there is a deficiency in income tax in the amount of \$7,705.78 for the taxable year 1952.

[Seal] /s/ JOHN E. MULRONEY,  
Judge

Entered April 7, 1958. Served April 8, 1958.

In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 57876

LYNDOL L. YOUNG and MILDRED W.  
YOUNG, Petitioners,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION FOR REVIEW

Taxpayers, Lyndol L. Young and Mildred W. Young, the petitioners in this cause, by Francis J. McEntee and Lyndol L. Young, Counsel, hereby file their petition for a review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States on April 7, 1958, determining a deficiency in the petitioners' Federal Income Taxes for the calendar year 1952 in the amount of \$7,705.78.

I.

The petitioners, Lyndol L. Young and Mildred W. Young, are husband and wife, residing in Los Angeles, California. Petitioners filed their joint Income Tax Return for the year 1952 with the District Director of Internal Revenue at Los Angeles, California. Lyndol L. Young hereinafter referred to as petitioner is a lawyer, and the entire income of the

petitioners for the year 1952 was derived from his law practice.

## II.

The controversy involves the proper determination of the petitioners' liability for Federal Income Taxes for the calendar year 1952.

1. In the year 1952 the total cost of the operation and maintenance of petitioners' home in Los Angeles was approximately \$20,000.00. Of this amount petitioner claimed the amount of \$5,846.43 as a business expense for the use of said home where he conducted the major part of his law practice. The evidence is undisputed that said home was used by petitioner for such purpose from January 1935, to January 1955, when petitioners sold said home. It was so used in the year 1952 and petitioner received from clients during said year for legal services rendered from said home the sum of approximately \$62,000.00. In petitioners' Income Tax Return for the years 1948, 1949, 1950 and 1951 this identical home expense for the identical premises involved was approved by the Commissioner of Internal Revenue after an audit and review of petitioners' returns for said years. In 1948 the Commissioner approved this expense in the sum of \$5,456.73; in the year 1949 the sum of \$4,747.76; in the year 1950 the sum of \$4,998.70, and in the year 1951 the sum of \$12,456.08, which included the same home expense and club dues and business cash expense, was likewise approved by the Commissioner. In 1952 the year which is in dispute in this pro-

ceeding, the Commissioner arbitrarily reduced the amount claimed by petitioners from \$5,846.43 to the sum of \$750.00.

2. In the year 1952 petitioner incurred total travel expense of \$7,500.00. Petitioner claimed \$3,500.00 of this amount as business expense directly connected with his law practice. Commissioner allowed only the sum of \$2,158.62. Petitioner made a trip to Honolulu in 1952 in connection with his law practice. He was accompanied by his wife. The total cost of the Honolulu trip was \$2,682.76. The Commissioner's examining officer or field agent allowed the sum of \$1,341.38 as business expense for the Honolulu trip but the entire amount of the Honolulu trip was disallowed by the Commissioner at the hearing before the Tax Court. Petitioner also incurred travel expense amounting to \$1,000.00 covering a trip to Boston, Massachusetts, to confer with petitioner's client The Liberty Mutual Insurance Company, and incurred further travel expense in the additional sum of \$1,000.00 covering various trips made by petitioner in connection with his law practice to Phoenix, Arizona, San Diego, La Jolla and Palm Springs.

3. In the year 1952 petitioner expended in cash disbursements in connection with his law practice in the form of checks payable to cash, and cashed by petitioner, the sum of \$3,150.00. Originally, petitioner claimed the sum of \$3,650.00, which was later reduced to said sum of \$3,150.00 in conference with Mr. Wulke of the Appellate Division. Mr. Wulke

representing the Commissioner approved the sum of \$2,000.00 of this expense on the basis of \$10.00 per day for 200 working days. The Commissioner disallowed the entire amount of \$3,150.00.

4. In the year 1952 petitioner claimed as business expense club dues and other club charges incurred by petitioner in the total sum of \$2,154.00 at the following clubs: Los Angeles Country Club, Stock Exchange Club, University Club and The Beach Club. The Commissioner allowed only the sum of \$1,008.00 covering dues paid by petitioner to said clubs and disallowed all expenses incurred by petitioner for the use of the facilities of said clubs.

5. In the year 1952 petitioner claimed depreciation on a Cadillac Automobile purchased by him in 1948, at a cost of \$5,200.00, for the years 1949, 1950, 1951 and 1952. The Commissioner allowed \$1,000.00 depreciation for the year 1952 and disallowed the sum of \$3,000.00 for prior years. Petitioner's auditor did not take depreciation on said automobile in petitioners' Income Tax Returns for the years 1949, 1950 and 1951 through inadvertence, which was not discovered by petitioner until 1953, at which time said auditor had left petitioner's employ and was in the employ of the United States Air Force in Europe.

### III.

The Tax Court filed its Memorandum Opinion on November 29, 1957. No Findings of Fact or Conclusions of Law were filed by the Tax Court al-

though petitioner formally requested and submitted Findings of Fact in petitioners' favor.

IV.

The said taxpayers, being aggrieved by the Opinion of the Tax Court, and by its decision entered pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

FRANCIS J. McENTEE and  
LYNDOL L. YOUNG,  
/s/ By LYNDOL L. YOUNG,  
Counsel for Petitioners.

Duly Verified.

[Endorsed]: T.C.U.S. Filed June 11, 1958.

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[Title of Court of Appeals and Tax Docket No. 57876.]

NOTICE OF FILING PETITION FOR REVIEW

To: Chief Counsel, Internal Revenue Service,  
Washington, D. C.

You are hereby notified that the petitioners on the 11th day of June, 1958, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a Petition for Review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above entitled cause. A

copy of the Petition for Review and the assignments of error as filed is hereto attached and served upon you.

Dated: Los Angeles, California, this 11th day of June, 1958.

Respectfully,

/s/ LYNDOL L. YOUNG and  
FRANCIS J. McENTEE,  
Counsel for Petitioners.

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed June 11, 1958.

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[Title of Tax Court and Cause.]

#### ORDER ENLARGING TIME

For cause, it is

Ordered: That the time for filing the record on review and docketing the petition for review in the United States Court of Appeals for the Ninth Circuit is extended to September 9, 1958.

Dated: Washington, D. C., July 7, 1958.

[Seal] /s/ J. E. MURDOCK,  
Judge.

Served: July 9, 1958.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 15, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record", including Joint Exhibit 1-A, and Petitioners' Exhibit 2, admitted in evidence, (with the exception of the transcript of testimony, (document number 4 in this record), which was submitted to us as a copy of the original with the corrections made in accordance with granted joint motion, the said original having been returned by us to the reporter for correction and having been lost in transit; and also with the exception of the certificate (item 10 of the designation) upon which the record speaks for itself), in the case before the Tax Court of the United States docketed at the above number and in which the petitioners in the Tax Court have filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket of my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 11th day of August, 1958.

[Seal] /s/ HOWARD P. LOCKE,  
Clerk, Tax Court of the  
United States.

[Endorsed]: No. 16177. United States Court of Appeals for the Ninth Circuit. Lyndol L. Young and Mildred W. Young, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: September 2, 1958.

Docketed: September 9, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 16177

LYNDOL L. YOUNG and MILDRED W.  
YOUNG, Petitioners,  
vs.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

#### STATEMENT OF POINTS

Now come taxpayers Lyndol L. Young and Mildred W. Young, the petitioners herein, by their attorneys, Francis J. McEntee and Lyndol L. Young, and hereby assert the following errors, which they intend to urge on review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States in the above cause, entered on April 7, 1958:

1. The Tax Court erred in that it did not make any Findings of Fact on the issues involved in the above cause, either in the memorandum opinion of the Tax Court or independently thereof, although proposed Findings of Fact in favor of petitioners were expressly requested and submitted.
2. Any Findings of Fact claimed by respondent as being set forth in the memorandum opinion of the Tax Court are not supported by the evidence, and are clearly erroneous.
3. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that the petitioners did not sustain their burden to show that the expenditures made by petitioner Lyndol L. Young in the year 1952 in the sum of \$5,846.43 as a business expense in connection with the partial maintenance of petitioners' residence where petitioner Lyndol L. Young conducted the major part of his law practice was reasonable and necessary.
4. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that petitioners claimed the sum of \$9,493.62 as a business deduction for the partial maintenance of petitioners' residence where petitioner Lyndol L. Young conducted the major part of his law practice. The amount claimed by petitioners for this expenditure was the sum of \$5,846.43.
5. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that petitioners did not sustain their burden to show that the expenditures made by petitioner Lyndol L. Young in the year 1952 in the sum of \$3,500.00 for busi-

ness travel expenses was reasonable, ordinary and necessary.

6. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that the petitioners did not sustain their burden to show that the expenditures made by petitioner Lyndol L. Young in the year 1952 in the sum of \$2,154.00 for club business expense was reasonable, ordinary and necessary.

7. The Tax Court erred in that it entirely disregarded, and made no reference in its memorandum opinion to the claim of petitioners in the sum of \$3,150.00 as a business expense for cash disbursements made by the petitioner Lyndol L. Young in the year 1952 in connection with the maintenance of his law practice.

8. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that the sole contention of petitioner Lyndol L. Young to establish the claim of \$5,846.43 in connection with the partial maintenance of petitioners' residence where petitioner Lyndol L. Young conducted the major part of his law practice was that petitioner Lyndol L. Young's gross income from his law practice in the year 1952 was \$61,000.00.

9. The Tax Court erred in that it disregarded the uncontradicted testimony of petitioner Lyndol L. Young in support of the contentions and claims of petitioners covering the deductions made by petitioner Lyndol L. Young for business expenditures in the year 1952. The petitioner Lyndol L. Young was the only witness who testified before

the Tax Court. His testimony was uncontradicted and he was not otherwise impeached, and his testimony was not inherently improbable and, therefore, should not have been disregarded by the Tax Court, although said petitioner Lyndol L. Young is an interested party.

10. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that the sum of \$750.00 allowed by the respondent on taxpayers' claim of \$5,846.43 for partial maintenance of petitioners' residence where petitioner Lyndol L. Young conducted the major part of his law practice, was reasonable and that the respondent was right in disallowing the balance of said claimed deduction for the sum of \$5,846.43.

11. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that the sum of \$2,168.42 allowed by the respondent on petitioners' claim of \$3,500.00 for travel expenses for petitioner Lyndol L. Young connected with his law practice in the year 1952 was reasonable and that the respondent was right in disallowing the sum of \$1,341.38 of said claim for \$3,500.00.

12. The Tax Court erred in that it decided, contrary to the uncontradicted evidence, that the sum of \$1,008.00 allowed by the respondent on petitioners' claim of \$2,150.00 for business club expense was reasonable and that the respondent was right in disallowing the sum of \$1,146.00 of said claim for \$2,154.00.

13. The Tax Court erred in that it disregarded

the uncontradicted evidence that the respondent Commissioner in the years 1948, 1949 and 1950, after auditing the income tax returns, of petitioners for said years, approved and allowed as a business expense the partial maintenance of the residence of the petitioners at 138 North June Street where petitioner Lyndol L. Young conducted the major part of his law practice, the sum of \$5,456.73 in the year 1948, the sum of \$4,747.76 in the year 1949 and the sum of \$4,998.70 in the year 1950.

14. The Tax Court erred in that it disregarded the uncontradicted evidence of petitioners that the respondent Commissioner in the year 1951, after auditing the income tax returns of petitioners for said year, approved and allowed as a business expense the lump sum of \$12,456.08 for the same three claims involved in the above cause, to wit, the partial maintenance of the residence of the petitioners at 138 North June Street; the club expenses of petitioner Lyndol L. Young; the cash disbursements made by the petitioner Lyndol L. Young in connection with his law practice. The amount approved and allowed by the respondent Commissioner covering the above mentioned three claims of petitioners in the year 1951, to wit, the sum of \$12,456.08, is approximately the total amount of the same claims made by petitioners in the year 1952, and the ruling of the respondent Commissioner approving and allowing said identical claims which are now involved in the above cause for the respective years 1948, 1949, 1950 and 1951 are binding

on the respondent Commissioner for the year 1952 and subsequent years where the same claims have been asserted by the petitioners in approximately like amounts. Petitioners paid additional income tax assessments in the years 1948, 1949, 1950 and 1951 in reliance on the ruling of respondent Commissioner that said deductions which were so allowed and approved by respondent Commissioner in said years 1948, 1949, 1950 and 1951 could be claimed by petitioners in subsequent years, including the year 1952, and would be allowed and approved. The respondent Commissioner is estopped from changing his previous ruling for the years 1948, 1949, 1950 and 1951, and in applying in the year 1952 a different arbitrary ruling highly prejudicial to petitioners covering the same deductions in approximately the same amounts as in said previous years, on the sole specious ground that respondent Commissioner is not bound by the alleged determination of his agents for the previous years. The respondent Commissioner does not contend that said ruling for said previous years was based upon a mistake of law or fact, or that there was any misrepresentation by the petitioners.

FRANCIS J. McENTEE and  
LYNDOL L. YOUNG,  
/s/ By FRANCIS J. McENTEE,  
Counsel for Petitioners.

Affidavit of Mailing attached.

[Endorsed]: Filed September 12, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

**PETITIONERS' DESIGNATION OF THE RECORD MATERIAL TO THE REVIEW**

The petitioners hereby designate the following portions of the record in the above cause, prepared, certified to and filed herein by the Clerk of the Tax Court as follows:

Petition, Document No. 2.

Answer, Document No. 3.

Official Report of Proceedings before the Tax Court at Los Angeles, California, June 5, 1957, Document No. 4.

Joint Motion to Correct Record—granted 8/14/57, Document No. 5.

Joint Exhibit 1-A and Petitioners' Exhibit No. 2, admitted in evidence, Document No. 6.

Petitioners' Brief, Document No. 7.

Report of F. Howard Morris, dated August 6, 1954, consisting of eight pages, Document No. 8.

Memorandum Reply Brief of Commissioner of Internal Revenue, Document No. 9.

Memorandum Opinion filed November 29, 1957, Document No. 10.

Decision, Document No. 11.

Petition for Review, Document No. 12.

Proof of Service of Petition for Review, Document No. 13.

Designation of Contents of Record on Review with Proof of Service thereon, Document No. 14.

Order Enlarging Time, Document No. 15.  
Statement of Points.

Petitioners' Designation of the Record Material  
to the Review.

FRANCIS J. McENTEE and  
LYNDOL L. YOUNG,  
/s/ By FRANCIS J. McENTEE,  
Counsel for Petitioners.

Certificate of Mailing attached.

[Endorsed]: Filed September 12, 1958. Paul P.  
O'Brien, Clerk.